

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TAMBRA L. SMITH,
Plaintiff,

V.

**JIM SHORKEY NORTH HILLS
CHRYSLER DODGE JEEP RAM and
ALLY FINANCIAL,**

Defendants.

Civil Action No. 23-1559

District Judge W. Scott Hardy
Magistrate Judge Patricia L. Dodge

MEMORANDUM ORDER

Presently before the Court is the Report and Recommendation (“R&R”) entered by Magistrate Judge Patricia L. Dodge in this matter on September 22, 2023. (Docket No. 7). The R&R recommends that this case be dismissed without prejudice for lack of subject matter jurisdiction under 28 U.S.C. § 1332(a)(1). (*Id.* at 1, 5). Service of the R&R was made on *pro se* Plaintiff Tambra L. Smith (“Plaintiff”) via U.S. Mail, and she was informed that any objections to same were due by October 5, 2023. (*Id.* at 5). Thereafter, Plaintiff did not file any objections to the R&R.

The Federal Rules of Civil Procedure provide that a party may file specific written objections to the proposed findings and recommendations of a magistrate judge, and a district judge must conduct a *de novo* review of any part of the R&R that has been properly objected to. *See* Fed. R. Civ. P. 72(b)(2), (3); 28 U.S.C. § 636(b)(1). Here, however, because Plaintiff has not filed any objections to the R&R, which explicitly stated that failure to file timely objections “will waive the right to appeal” (Docket No. 7 at 5), we review the magistrate judge’s decision for plain error. *See Brightwell v. Lehman*, 637 F.3d 187, 193 (3d Cir. 2011) (citing *Nara v. Frank*, 488 F.3d

187, 194 (3d Cir. 2007)); *see also* Fed. R. Civ. P. 72(b) advisory committee note to 1983 Addition (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citing *Campbell v. U.S. Dist. Ct. for N.D. Cal.*, 501 F.2d 196, 206 (9th Cir.), *cert. denied*, 419 U.S. 879 (1974))).

In this case, upon careful review of the R&R, the Complaint (Docket No. 4), and the entire record, the Court, finding no plain error on the face of the record, will accept Judge Dodge’s recommendation. As such, the Court will adopt the R&R as the Opinion of the Court and will dismiss this case without prejudice for lack of subject matter jurisdiction under 28 U.S.C. § 1332(a)(1), as set forth more fully therein. In so ruling, the Court agrees with Judge Dodge’s determination that complete diversity does not exist in this case since Plaintiff and one of the Defendants, Jim Shorkey North Hills 1, LLC (“Jim Shorkey North Hills”), owner of the fictitious name, “Jim Shorkey North Hills Chrysler Dodge Jeep Ram,” are both Pennsylvania citizens. (Docket No. 7 at 2-3). The Court also agrees with Judge Dodge that Jim Shorkey North Hills is indispensable to the just and meaningful litigation of the claims in this case, so the Court cannot drop that party from the case to preserve jurisdiction. (*See id.* at 4-5). Therefore, the Court agrees with Judge Dodge’s conclusion that, as complete diversity does not exist, this Court lacks subject matter jurisdiction over this case. (*See id.* at 5). For these reasons, as set forth more fully in the R&R, this case will be dismissed without prejudice for lack of subject matter jurisdiction under 28 U.S.C. § 1332(a)(1).

Accordingly, in view of the foregoing, the Court enters the following Order:

AND NOW, this 25th day of October, 2023,

IT IS HEREBY ORDERED that the Report and Recommendation (“R&R”) (Docket No. 7) is ADOPTED as the Opinion of the Court.

For the reasons set forth in the R&R, IT IS FURTHER ORDERED that Plaintiff’s Complaint is dismissed without prejudice for lack of subject matter jurisdiction under 28 U.S.C. § 1332(a)(1).

The Clerk of Court shall mark this case closed.

/s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: Tambra L. Smith (via U.S. Mail)